IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

OP.No. 2027 of 2001(N)

PETITIONER:

M.R. JAYACHANDRAN,
MOOLIPPARAMBIL HOUSE,
P.O. VAKA, (VIA) MATTAM,
TRICHUR.

BY ADV. SRI.D. ANILKUMAR,
ADV. SRI.P.K.RAVISANKAR.

RESPONDENTS:
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1. **COCHIN DEVASWOM BOARD,**
REPRESENTED BY ITS SECRETARY,
TRICHUR.

2. **THE PRINCIPAL,**
SREE KERALA VARMA COLLEGE,
TRICHUR.

BY ADV. SRI.M.RAMESH CHANDER,
SRI.K.GOPALAKRISHNA KURUP,SC,COCHIN D.B.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 3427/2001 IN O.P. NO. 2027/2001-N.

DISMISSED

18/09/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. G5.562/83 DT. 18/11/1983 SIGNED BY PRINCIPAL, S.K.V. COLLEGE, TRICHUR TO THE PETITIONER.

EXT.P.2: COPY OF THE ORDER NO. G5/21/91 DT. 19/03/1991 SIGNED BY PRINCIPAL, S.K.V. COLLEGE, TRICHUR, TO THE PETITIONER.

EXT.P.3: COPY OF THE CERTIFICATE ISSUED FROM THE WARDEN, SREE KERALA VARMA MENS' HOSTEL, TRICHUR.

EXT.P.4: COPY OF THE ORDER NO. H. 1310/92 DTD. 30/01/1993 OF THE COCHIN DEVASWOM BOARD.

EXT.P.5: COPY OF THE CERTIFICATE ISSUED BY THE DOCTOR, T.H.Q. HOSPITAL, WADAKKANCHERRY DTD. 21/07/2000.

EXT.P.6: COPY OF THE ORDER ISSUED BY SECRETARY OF THE COCHIN DEVASWOM BOARD TO THE PETITIONER DTD. 26/05/1993.

EXT.P.7: COPY OF THE ORDER G.O. (P). NO. 60/88/FIN. DTD. 21/01/1988 OF THE GOVERNMENT OF KERALA.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE.

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.2027 of 2001-N

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Dated this the 18th day of September, 2007.

JUDGMENT

1. By Ext.P1, the petitioner, nominated by Employment Exchange, was appointed as Watchman in the Sree Kerala Varma College Men's hostel. That college belongs to the Cochin Devaswom Board. But it is a private college in terms of the University Laws. The college staff do not form part of the Devaswom establishment. Their conditions of service are regulated by the University Laws, though a power of discipline could be retained by the educational agency.

2. With the passage of time, the petitioner was appointed as Office Assistant in the Men's Hostel of the College on

account of a vacancy by the transfer of one Asokan from the Men's Hostel to the Women's Hostel on the recommendation of the Warden. Ext.P2 proceedings are issued reading the subject as promotion. While no statutory rules or orders are pointed out in support of the claim that it was, in essence, a promotion, it is attempted to be pointed out that on becoming an Office Assistant on the strength of Ext.P2 order, the petitioner is entitled to claim parity with the Assistants working in the Devaswom establishment applying the doctrine of equal pay for equal work. This is, in short, the claim in the writ petition.

3. Ext.P5 shows that the petitioner is 50% orthopaedically handicapped. Petitioner and other employees of the college hostel moved the competent authority under the Minimum Wages Act which, going by the pleadings of the petitioner, granted an order in their favour overruling the contention of the Devaswom that such persons are not

Devaswom employees. But that decision is not a matter on record. Even if it were, the quality of employment to attract the provisions of the Minimum Wages Act is not the same as that is required to treat the person as part of an establishment governed by statutory provisions. Therefore, in the absence of any specific provision being referred to in favour of the claim of the petitioner that he is a Devaswom employee, that contention has to necessarily fail. That apart, the question of equal pay for equal work would not also come into play, particularly when the duties and responsibilities of the grade to which the petitioner claims parity and his duties and responsibilities are not enumerated and pleaded, while the petitioner only states that the duties and responsibilities to the post he holds are the same as the duties and responsibilities of Assistants in the Devaswom establishment.

4. For the aforesaid reasons, I find that the petitioner is not entitled to any declaration of parity in pay with the Office Assistants of the Devaswom establishment as claimed by him.

5. Be that as it may, on the strength of the uncontroverted Ext.P5, the petitioner has 50% orthopaedic disability and Ext.P7 is the Government Order by which financial assistance is being extended by the Government to physically handicapped employees of public sector undertakings. Stricto senso that Government Order may not be binding on the Devaswom Board or the College establishment. However, having regard to the peculiar facts and circumstances of the case, respondents 1 and 2 are directed to ensure that the benefit of Ext.P7 is extended to the petitioner with effect from the commencement of the financial year 2007-2008.

The writ petition is disposed of with the aforesaid directions.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.2027 of 2001-N

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JUDGMENT

Dated: 18th September, 2007.